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HONORABLE CHRISTOPHER M. ALSTON
HEARING DATE: OCTOBER 17, 2024
HEARING TIME: 9:30 A.M.
LOCATION: SEATTLE, COURTROOM 7206

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

B-1208 PINE, LLC,

Debtor.

No. 24-10088-MLB

DEBTOR'S RESPONSE TO OBJECTIONS
TO APPROVAL OF DISCLOSURE
STATEMENT FOR DEBTOR'S PLAN OF
LIQUIDATION

B-1208 Pine, LLC, debtor and debtor in possession, by and through its undersigned attorneys, hereby responds to *Pivot Apartments Lender LLC's Objection to the Disclosure Statement for Debtor's Plan of Liquidation* [ECF No. 177] (the "Lender Objection"), and *Walsh Construction Company II, LLC's Objection to Approval of Disclosure Statement for Debtor's Plan of Liquidation* [ECF No. 178] (the "Walsh Objection"), both of which relate to the *Disclosure Statement for Debtor's Plan of Liquidation* [ECF No. 165] (the "Disclosure Statement"). The Lender Objection is comprised almost exclusively of objections to confirmation of *Debtor's Plan of Liquidation* [ECF No. 164] (the "Liquidation Plan") rather than the Disclosure Statement, while the Walsh Objection is a mix of disclosure-related and confirmation objections, with the emphasis on the latter, while making various

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1 objections allegedly on behalf of other parties (the Lender, general unsecured creditors) rather than on
2 its own behalf.

3 The Disclosure Statement describes a simple liquidating plan pursuant to which the Debtor's
4 apartment project would be sold. The Plan will monetize the property efficiently and allow creditors
5 to obtain the benefit of the real estate excise tax exemption, which will result in savings of several
6 hundred thousand dollars. With the exception of the Lender, creditors would be better off with the
7 Debtor's Plan as it is self-evident that the owner of a property and a reasonable marketing period will
8 lead to a much greater return for the property than would a trustee or other third party having
9 absolutely no knowledge of the property on a fire-sale schedule. The Lender cannot complain that it
10 is being unfairly delayed, as the scheduled maturity date for its underlying loan will not occur until
11 November 2025.

12 The Debtor is aware that the Lender has filed its own liquidation plan, which is little more than
13 an effort to obtain the equity in the property that has been created by declining interest and
14 capitalization rates to the prejudice of unsecured creditors and equity holders. At a minimum,
15 creditors should be given the opportunity to choose between the two plans so they might retain some
16 ability to recover on their claims rather than have a fire sale that leads to a loss of value.

17 **A. Lender's Objection.**

18 The Lender Objection objects to approval of the Disclosure Statement on the basis that the
19 Liquidation Plan is "patently unconfirmable." For example, the Lender erroneously claims that a
20 liquidation by a chapter 7 trustee would yield a greater return than would a sale by the owner of the
21 property with a modest marketing period. The claim is ironic, because the fire-sale schedule that the
22 Lender's plan would seek to effectuate would likely yield *less* than would be achieved by a chapter 7

1 trustee, whose fiduciary duties would not cause it to so willingly trade breakneck liquidation speed for
2 maximizing on the recovery of the estate's sole asset.

3 The Lender also states that it is entitled to default-rate interest on the basis that it is
4 oversecured. That is not the law of the case. Rather, to date the only evidence of the value of the
5 Lender's collateral is testimony from the Debtor that, as of the January 16, 2024, petition date, the
6 apartment property was worth about \$32 million. In contrast, the Lender's claim (per its proof of
7 claim) totaled more than \$35 million as of the petition date. This is before one takes into account the
8 effect of the senior lien of Walsh Construction. The Lender seeks a determination that it is senior to
9 Walsh by virtue of equitable subrogation, but only as to the amount of the payoff of the prior senior
10 loan – or about \$20 million. The Plan properly treats the Lender's claim.

11 Finally, the Lender objects pursuant to Bankruptcy Code section 1129(a)(10) – that the Debtor
12 has failed to obtain the consent to the Plan of at least one impaired class. Given that balloting has not
13 even begun, this objection is – at best – premature.

14 The Lender's only objections that are actually directed towards the adequacy of the Disclosure
15 Statement are two. First, it states that the Debtor has provided no explanation for a 12-month period
16 within which to market and sell the property. There is no science at work here. Rather, the basis for
17 that period is to permit adequate marketing of the property and a broad introduction and offering of
18 the property so as to achieve the highest value that is reasonably attainable given the constraints of a
19 liquidation plan. Because the Lender's underlying loan was not set to mature until November 2025,
20 the proposal is generally consistent with the Lender's expectations.

21 Second, the Lender complains about the assumption of the leases, contending that "no
22 authority is sought in the current plan to assign the leases to the buyer." This is simply incorrect.
23

1 Article VI of the Plan specifically provides that all tenant leases that exist as of a sale would be
2 assumed and assigned to the buyer.

3 **B. Walsh Objection.**

4 Walsh also objected to the Disclosure Statement as to issues that would not affect Walsh but
5 might affect others. Its first point is as to the treatment of Class 4 and goes into a long explanation of
6 why that treatment is inappropriate. The Debtor would agree to simply change the treatment of
7 Class 4 – general unsecured claims – to provide that each would be paid from sale proceeds, to the
8 extent of available funds, after payment of all claims having a higher priority.

9 Finally, Walsh objects on the basis that there is no provision if a sale does not occur prior to
10 the end of the 12th month. The Debtor does not foresee any circumstances by which this issue will
11 arise, but is happy to work with the parties to craft language that is acceptable in treatment of this
12 issue.

13 DATED this 14th day of October, 2024.

14 BUSH KORNFELD LLP

15 By /s/ James L. Day
16 James L. Day, WSBA #20474
17 Richard B. Keeton, WSBA #51537
18 Attorneys for the Debtor